

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Office Max North America,

Petitioners-Appellants,

v.

Pottawattamie County Board of Review,

Respondent-Appellee.

ORDER

Docket No. 10-78-0309

Parcel No. 095 035 453 014914 015

On August 1, 2011, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Office Max North America (Office Max) designated Bill Barrett, a Senior Tax Manager with DuCharme, McMillen and Associates, Inc. as its legal representative. The Pottawattamie County Board of Review designated Assistant County Attorney Leanne Gifford as its legal representative. The Appeal Board having reviewed the record, heard the testimony and being fully advised, finds:

Findings of Fact

Office Max is the owner of a commercially classified property located at 505 30th Avenue, Council Bluffs, Iowa. The property is a one-story building, built in 1998, with 23,546 square feet of gross building area. The property also has 44,726 square feet of asphalt paving and 1920 square feet of concrete parking. The site is 2.27 acres.

Office Max protested to the Pottawattamie County Board of Review regarding the January 1, 2010, assessment of \$3,162,500, allocated as \$454,365 in land value and \$2,708,135 in improvement

value. The January 1, 2010, assessment of the subject property did not change from the prior year's assessment.

Office Max's petition to the Board of Review was on the following grounds: 1) that the assessment is not equitable as compared with assessments of other like property under Iowa Code section 441.37(1)(a); 2) that the property was assessed for more than authorized by law under section 441.37(1)(b); and 3) that there has been a change in value since the last assessment under sections 441.37(1) and 441.35(3). Office Max asserted the correct total value is \$1,506,944.

The Board of Review denied the protest stating the first two grounds pled were not applicable in an interim assessment year. The Board of Review also stated "the protester failed to prove a change in the value of the real estate since it was last reassessed."

Office Max appealed and reasserted its claims of over-assessment and downward change in value to this Board. Office Max now claims the correct value of the property is \$2,431,380.

The only ground we will consider on appeal is whether there has been a change in value since the last reassessment, as it is the only ground appropriately pled in an "interim year" when the assessor has not changed the assessment.

Bill Barrett testified on behalf of Office Max. Barrett did not develop a sales comparison approach to value, citing that there have been "zero comparable sales." He, therefore, only developed the income approach to value. He relied upon the market rents of three listed properties. The properties are all in Council Bluffs and located at 20 Arena Way, 40 Arena Way, and 1700 N 16th Street.

When questioned about the location of these properties and their developments in comparison to the subject property, Barrett was unable to recall pertinent details. He conceded they were in different areas than the subject property and "down the road and near the convention center." There was no evidence to demonstrate that these properties are similarly situated as the subject; or that these

properties have similar market appeal from a commercial standpoint of visibility and access to consumers. While he testified that he was unable to describe the location of the comparable rental located on N 16th Street, he did state that it was “not off the interstate.” He had previously described Office Max as being “right off the interstate” and in an area of nearby shopping, food places, and gas stations. His testimony and knowledge of the properties he chose for comparison was not very compelling.

In his rent survey and comparable assessment survey, Barrett notes the actual rent of the subject property is \$11.00 per square foot as of January 1, 2010.¹ He uses a market rent of \$10.00 per square foot, based upon the listings of the three previously mentioned properties. We note that he made no adjustments to the comparable rents for differences in quality, location, age, or condition.

Barrett develops a “capitalization of rent” or an income analysis. He outlines a market capitalization which he claims represents the actual value of the subject property and compares it to an “assessor reverse capitalization.” We note that Barrett only provides support for his conclusion of market rent and his capitalization rate. In developing his opinion of value, Barrett relies upon a \$10.00 square foot market rent which he concluded from his rent survey. He also includes 0.00% vacancy, 5.00% operating expenses (representing 3.00% for replacement costs and 2.00% for management expenses), and a capitalization rate of 9.2%. For his capitalization rate he relies on RealtyRates.com and selects a regional rate for the “Mid West, Class A & B Neighborhood Community & Strip Retail Centers.” This rate for the 4th Quarter of 2009 is reported at 9.2%. Barrett testified that he did not research the local market to determine if this regional rate was supported. His income analysis concludes a value opinion of \$2,431,380. We give this limited consideration based upon his testimony, which indicates minimal local market research was conducted to arrive at his opinions.

¹ The rent is set to graduate to \$11.50 in 2013.

Barrett claims the assessor's value of the property is incorrect because it would require a market rent of \$13.01. This conclusion however is a result of Barrett "backing into" the income approach and using pre-determined capitalization rates, operating expenses, and vacancy rates. Barrett confirmed through testimony that he never questioned the assessor's office on how they arrived at their valuation and therefore does not know if the income approach was developed; or if so, what calculations were considered in the development of the approach. Barrett's method of backing into an assumed rental rate is unorthodox and unsupported as a method of refuting a value opinion.

The Board of Review did not offer any evidence.

While Office Max offered a January 1, 2010, market value for the property we do not find it reliable. More importantly, Office Max has failed to show a change of value since the last assessment. To do this, it needed to show a January 1, 2010, market value as compared to the January 1, 2009, market value. Both values are necessary to establish a change in value since the last assessment.

Based upon the foregoing, we find insufficient evidence has been presented to support Office Max's claim.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all

of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

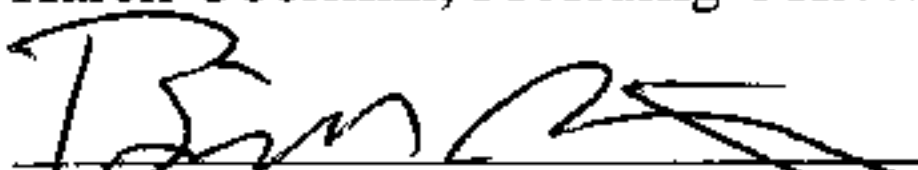
In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).


In a non-reassessment or "interim" year, when the value of the property has not changed, a taxpayer may challenge its assessment on the basis that there has been a downward trend in value. *Eagle Food Ctrs., Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). The last unnumbered paragraph of Iowa Code section 441.37(1) and its reference to section 441.35(3) give rise to the claim of change in value. For a taxpayer to be successful in its claim of change in value, the taxpayer must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co. of Iowa v. Bd. of Review of the City of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1997). The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for a taxpayer to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451. Office Max provided a January 1, 2010, value, however we do not find it persuasive evidence of the property's fair market value for the reasons previously discussed. Additionally, Office Max did not provide evidence supporting the January 1, 2009, market value even though they established a January 1, 2010, market value. Both values are required to support a claim of change in value.

THE APPEAL BOARD ORDERS the assessment of the Office Max property located at 505 E 30th Avenue, Council Bluffs, Iowa, of \$3,162,500 as of January 1, 2010, set by the Pottawattamie County Board of Review, is affirmed.

Dated this 24 day of August, 2011


Karen Oberman, Presiding Officer


Richard Stradley, Board Chair


Jacqueline Rypma, Board Member

Cc:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>8-24</u> , 2011	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	